

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM LENNIE STAMPS,

Plaintiff,

No. CIV S-05-0427 DFL KJM P

vs.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief under 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis under 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302 under 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$250.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). An initial partial filing fee of \$3.28 will be assessed by this order. 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be

1 forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's
2 account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

3 Plaintiff's complaint states cognizable claims for relief under 42 U.S.C. § 1983
4 and 28 U.S.C. § 1915A(b). If the allegations of the complaint are proven, plaintiff has a
5 reasonable opportunity to prevail on the merits of his Eighth Amendment claims against
6 defendants Mullin, McMullin, Baron, Prospers and Grannis. With respect to the remainder of the
7 claims and defendants identified in plaintiff's complaint, plaintiff's complaint fails to state a
8 claim upon which relief can be granted. Therefore, the court will order service of process only
9 on the defendants identified above.

10 On March 3, 2005 and March 14, 2005, plaintiff filed requests for the
11 appointment of counsel. The United States Supreme Court has ruled that district courts lack
12 authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United
13 States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court
14 may request the voluntary assistance of counsel under 28 U.S.C. § 1915(e)(1). Terrell v. Brewer,
15 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir.
16 1990). In the present case, the court does not find the required exceptional circumstances.
17 Plaintiff's requests for the appointment of counsel will therefore be denied.

18 In accordance with the above, IT IS HEREBY ORDERED that:

19 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

20 2. Plaintiff is obligated to pay the statutory filing fee of \$250.00 for this action.

21 Plaintiff is assessed an initial partial filing fee of \$3.28. All fees shall be collected and paid in
22 accordance with this court's order to the Director of the California Department of Corrections
23 filed concurrently herewith.

24 3. Service is appropriate for defendants Mullin, McMullin, Baron, Prospers and
25 Grannis.

26 4. The Clerk of the Court shall send plaintiff five USM-285 forms, one summons,

1 an instruction sheet and a copy of the complaint filed March 3, 2005.

2 5. Within thirty days from the date of this order, plaintiff shall complete the
3 attached Notice of Submission of Documents and submit the following documents to the court:

- 4 a. The completed Notice of Submission of Documents;
5 b. One completed summons;
6 c. One completed USM-285 form for each defendant listed in number 3
7 above; and
8 d. Six copies of the endorsed complaint filed March 3, 2005.

9 6. Plaintiff need not attempt service on defendants and need not request waiver of
10 service. Upon receipt of the above-described documents, the court will direct the United States
11 Marshal to serve the above-named defendants under Federal Rule of Civil Procedure 4 without
12 payment of costs.

13 7. Plaintiff's March 3, 2005 and March 14, 2005 requests for the appointment of
14 counsel are denied.

15 DATED: April 4, 2006.

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18 UNITED STATES MAGISTRATE JUDGE
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NOTICE OF SUBMISSION
OF DOCUMENTS

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

1 completed summons form

5 completed USM-285 forms

6 copies of the 3/3/05
Complaint

DATED:

Plaintiff